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THE FREQUENCY OF CAPITAL PUNISHMENTS

INCONSISTENT WITH

JUSTICE, SOUND POLICY, AND RELIGION.

Being the Substance of a

SERMON.

By WILLIAM DODD, LLD.
CHAPLAIN TO THE KING.

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EXODUS XX. 13.

THOU SHALT NOT KILL.

HOWEVER faſhionable it may be, amongſt a certain order of men, to contemn the Religion, and decry the Laws of *Moſes*; there is one proof of their excellence, which it is not very eaſy to invalidate: "An imitation of them is plainly "to be traced in the moſt ancient inſtitutions." Nor can we doubt a moment that the wiſeſt and greateſt legiſlators of antiquity drew from this ſource, and formed their laws upon this great model. Indeed, the truth of this aſſertion has been put out of all queſtion by the learned labours of ſome, employed in an accurate detail of it*: Nor is it at all to be wondered that thoſe laws ſhould have been generally copied and imitated, when we conſider, that they owe their original to the Divine Wiſdom, and are well worthy that wiſdom from whence they ſpring.

'Tis true, great part of thoſe laws was calculated for a particular people, and to anſwer particular ends; and in this reſpect they are admirably formed.

* See Petit. Leges Atticæ, and Critici Sacri. part II. Vol. I. Alſo Pithoei Moſaicarum & Romanarum Legum Collatio.

But the *moral laws*—to which we more immediately refer,---are, it muſt be allowed, accommodated in the beſt manner poſſible to the welfare of ſociety, and to the grand ends of ſecuring the life, the property, the reputation, and the peace of mankind. The Decalogue alone contains the baſis of all moral equity; nor is it eaſy to conceive more inſtructive and important wiſdom, couched in a compaſs ſo comprehenſive and intelligible. Hence (by the way) we may remark one inſtance, amongſt a thouſand, of the utility of the *Chriſtian Sabbath*; which, holding up conſtantly the ten great laws delivered by God himſelf, in the moſt ſolemn manner, ſerves deeply to impreſs the minds even of the moſt ignorant; and tends, no doubt, greatly to keep alive that conſcientious dread of atrocious offences, by which the jarring elements of ſociety are preſerved in ſuch decent and tolerable order.

How far the *Jews*, or how far many even amongſt chriſtians, entered into the ſpirit of the Moſaick laws, it is not eaſy to determine. We learn however, from our Divine Legiſlator, who came to *fulfil*, to complete and perfect, and to ſhew thoſe laws in their utmoſt and *ſpiritual* extent, That *we* are called to higher privileges, and of conſequence to higher perfection; that *we*, as his diſciples, are by no means to reſt in the *letter*, but to conſider thoſe laws as directed to the *heart*; to the very ſpring and ſource of the evil which they mean to correct. Thus, for inſtance, with reſpect to that law which I have choſen for my text, He tells us,* "That *we*, as chriſtians ſhall much miſtake its "force, and fall ſhort of its completion, if we con- "ceive it, with *ſome of old time*, calculated merely

* See Matt. c. v. ver. 17, 21, &c.

"to

" to prevent *actual murder*, and the immediate effu-
" ſion of blood. Directed to the inmoſt intention,
" its great purpoſe and deſign is to correct every
" Tendency to ſo capital an evil, and to prevent
" even the Probability of an offence ſo notorious,
" by teaching us to reſtrain the firſt ſallies of wrath,
" and to bury in eternal oblivion every cauſe of
" reſentment."

The depth of the Divine Wiſdom in thus *laying the ax to the root of the tree*, muſt be manifeſt to the leaſt reflection; and every man who thinks at all, muſt be well aſſured, that this regard to firſt principles, this purification and rectitude of the *intention*, is the alone ſolid and certain barrier againſt vice; is the only ſure and ſubſtantial baſis of virtue.

Murder is a crime of ſuch a ſort, that human nature, in its genuine operations, ſhrinks with horror from it. Nor is it to be ſuppoſed even poſſible, were our Saviour's injunction reſpecting *wrath and reſentment* in any degree regarded. But, *theſe* let looſe, man becomes a wild ungovernable creature; and while their tyranny prevails over the ſoul, there is no wonder that crimes even horrible as *murder* enſue. We may therefore eaſily diſcern from hence how much it is our duty—if we would avoid the dreadful Probability of falling into the *worſt crimes*,--to guard with the ſtricteſt caution againſt *thoſe*, which, in another view, we may conſider as the *leaſt*; but which, as ſeen in their conſequences, are truly *formidable*.

We might inſtance in many particulars: but, while guarded by rank and education from any apprehenſion of voluntary murder—Is there not a ſpecies of murder, ſavage in its nature, irrational in its

mode, and un-chriſtian in its whole proceeding, from the danger of which the higheſt ranks are by no means exempt, and which yet, for the moſt part, owes its origin to furious *anger and reſentment?*—— Were *theſe* checked in their riſe, were men cautious to purify their intention, and to curb the firſt ſallies of paſſion, theGothick practice of *Duelling* would ſoon be exploded; nor would any unfortunate *murderer* have occaſion to deplore in future life, his hands ſtained perhaps with the blood of his deareſt friend, deſtroyed by his precipitate wrath!*

There is alſo another kind of *murder*, which (tho' ſome of the heathen world have endeavoured in a meaſure to *applaud*; and ſome of modern times have attempted to *palliate*, if they could not defend) is yet no leſs poſitively forbidden by the law before us, "THOU SHALT NOT KILL," than it would be completely prevented by an attention to our Saviour's explanation of that law. Pride and reſentment commonly give arms to the deſperate reſolution of the gloomy *Suicide*; who, too haughty to ſupport injuries, and too reſentful to forgive, or implore forgiveneſs, flies with horrible guilt into future, irremediable evils, from thoſe, which a ſmall degree of patience and humility would render not only tolerable here, but perhaps rewardable eternally.

Thus we ſee that this commandment of Moſes, particularly as explained and ſpiritualized by *Jeſus Chriſt*, if duly regarded, would admirably and completely ſerve the great purpoſe deſigned, and prove in every view an ample barrier and fence of the human life: that *life*, which God hath been pleaſed from the beginning to hold and to treat as ſo ſacred

* See a Diſcourſe on this ſubject in the third vol. of Sermons to Young Men, p. 1, &c,

the

that the voluntary deſtruction of it ſhould admit of no pardon; *Whoſo ſheddeth man's blood*, runs the ſacred charter, *by man ſhall his blood be ſhed*: And the important reaſon is immediately ſubjoined; *for in the image of God made he man.* Hence it is that in all governments, and under all laws, the moſt lenient, as well as the moſt ſevere, *Murder* has never eſcaped condemnation; nor has any legiſlator thought himſelf juſtified in exacting leſs than blood for blood; in perfect agreement with that deciſion of Moſes "*That the land cannot be cleanſed of the* "*blood that is ſhed in it, but by the blood of him that* "*ſhed it.*"*

But while reaſon and religion, while every law human and divine, concur in the juſtice of this ſentence, and allow life for life; may it not be fairly queſtioned, whether any legiſlator or magiſtrate, any ſtate or ſociety, can with *Juſtice* take away life for every offence, and in many caſes for *trivial* offences?—There are, no doubt, ſome crimes ſo atrocious in their nature, ſo immediately injurious to ſociety, that they muſt and ought to be *capitally puniſhed.* But, allowing this, the queſtion ſtill recurs, and ſeems not eaſy to be reſolved: nor can thoſe laws well be juſtified, which, in a variety of inſtances, exact the extremeſt penalty for offences by no means extreme in their nature.

To thoſe who are acquainted with the nature of our conſtitution, the mildneſs of our government, the temper of our people, and particularly the humane and benevolent ſpirit which characterizes the preſent times; to ſuch, it may well ſeem *ſtrange*, if not wholly *incredible*, that the evil juſt referred to ſhould be found amongſt us, and that of all

* Numb. xxxv. 33.

nations

nations upon earth, the laws of England perhaps ſhould be the moſt ſanguinary: there being in them, as I am credibly informed, above *one hundred and fifty capital* caſes*; and, in full proof thereof, almoſt continual executions!

Were any valuable ends of government, any principles of ſound POLICY, any purpoſes of public reformation anſwered by this proceeding, it might

* Dr. Blackſtone in his *Commentaries*, after ſpeaking of the gradation of puniſhment aſſigned in the laws of England, and of the hope of tranſportation thereby given, obſerves, "Yet tho' in this inſtance we may glory in the wiſdom of the Engliſh laws, we ſhall find it more difficult to juſtify the frequency of capital puniſhment to be found therein inflicted (perhaps inattentively) by a multitude of ſucceſſive, independant ſtatutes, upon crimes very different in their natures. It is a melancholy truth, that among the variety of actions which men are daily liable to commit, no leſs that 160 have been declared by acts of parliament * to be felonies without benefit of clergy, or, in other words, to be worthy of inſtant death. So dreadful a liſt, inſtead of diminiſhing, increaſes the number of offenders. The injured, through compaſſion, will often forbear to proſecute: Juries, through compaſſion, will ſometimes forget their oaths, and either acquit the guilty, or mitigate the nature of the offence: And Judges, through compaſſion, will reſpite one half of the convicts, and recommend them to the royal mercy. Among ſo many chances of eſcaping, the needy and hardened offender overlooks the multitude that ſuffer; he boldly engages in ſome deſperate attempt to relieve his wants, or ſupply his vices; and if unexpectedly the hand of juſtice overtakes him, he deems himſelf peculiarly unfortunate in falling at laſt a ſacrifice to thoſe laws, which long impunity has taught him to contemn."

* See Ruffhead's index to the ſtatutes, Tit. Felony: and the acts which have been ſince made.

certainly

certainly be the better juſtified. But ſo far is this from being the caſe, that ſound POLICY, no leſs than RELIGION and HUMANITY, reverts againſt the practice.

In a nation like ours, crowded with buſineſs, and extenſive in dominion, the *life* of the *ſubject*, of the *common people* eſpecially, (thoſe nerves and ſinews of a ſtate) is peculiarly valuable: and conſequently, every method to promote and increaſe *population* muſt be deſirable and important. But what can be more contrary to this end than the cutting off continually, numbers of theſe ſubjects, and that, for the moſt part, at a very early period of life, when the ends of government might be better anſwered by *ſaving* them, and thoſe lives be rendered uſeful to the community?

For, it is evident to the ſlighteſt obſervation, that the only ends at which government can be ſuppoſed to *aim*, in the execution of *criminals*, are not anſwered by the frequency of our executions. *Correction* and *example* are the only proper objects of puniſhment. It is plain that the *former* can never be attained by the *death* of the ſufferer; and for the *latter*, we are every day fully aſſured, that public executions are not of the leaſt avail. The common people flock to them, as to a ſpectacle, in which they are gratified! and we conſtantly hear of crimes, not leſs flagitious than thoſe for which the criminal is to die, perpetrated even at the very place and moment of his puniſhment.

And, if neither *example* nor *reformation* is effected by the *death* of theſe offenders; if the ſtate is in no reſpect benefited, but on the contrary injured, by the diminution of its members; If all the

the good ends of punishment may be attained, and better attained, by subjecting such offenders to perpetual *servitude* and labour; does not the voice of humanity, of christian charity and benevolence, unite with that of sound Policy, to implore from the throne of princes this salutary amendment of the laws?

An able and illustrious foreigner, whose work breathes the true spirit of humanity and freedom, hath urged a variety of arguments on the Topick, well known, I persuade myself, to this audience, and therefore the less necessary to be insisted on at present. He seems to have proved beyond dispute what I have suggested before, "That the punish-"ment of death can never be *just*, in cases of that "nature to which we refer." Nor are his arguments less conclusive, to shew the superior advantages arising from condemning offenders to *servitude* and labour. "It is not the *intenseness* of the pain (he has justly remarked) which has the greatest effect on the mind, but its *continuance*: For our sensibility is more easily and more powerfully affected by *weak* but *repeated* impressions, than by a violent but *momentary* impulse. The death of a criminal is a terrible but momentary impulse, and therefore a less efficacious method of deterring others, than the *continual example* of a man deprived of his liberty, and condemned as a beast of burden to repair by his labors the injury he has done to society. "If *I* commit such a crime "(says the spectator to himself) I shall be reduced "to that miserable condition for the rest of my "life!" A much more powerful preventive than the

the fear of death, which men always behold in diſtant obſcurity. " The *execution* of a criminal is to the multitude a ſpectacle, which in ſome excites *compaſſion* mixed with indignation: theſe ſentiments occupy the mind much more than that ſalutary *terror* which the laws endeavour to inſpire: But in the contemplation of *continued* ſuffering, *terror* is the only, or at leaſt the predominant ſenſation."*

It would be eaſy, if a complete diſcuſſion of this ſubject was intended, to ſhew at large the *injuſtice* of thoſe laws which demand *blood* for the ſlighteſt offences; the ſuperior *juſtice*, and the *propriety* of inflicting perpetual and laborious Servitude; the greater utility hereof to the ſufferer, as well as to the ſtate, and to *our* ſtate eſpecially; wherein we have a variety of neceſſary occupations peculiarly noxious and prejudicial to the lives of the honeſt and induſtrious, and in which *they* might be employed, who had forfeited their lives and their liberties to ſociety. It would likewiſe be eaſy to remove thoſe *objections*, which ſome, from motives of *policy*, and others of *humanity*, have urged againſt perpetual *ſlavery*, in a land of freedom like ours: and it would be eaſy to urge examples both in ancient and modern ſtates, ſufficiently ſtrong to excite imitation. But, meaning only to plead a little in the cauſe of juſtice and humanity (neither unbecoming, let me hope, the ſacred Character which I bear, the ſolemn Place in which I ſpeak, nor the auguſt Audience before whom I plead; ever quick,

* See the Marquis de Beccaria's Eſſay on crimes and puniſhments, and " the principles of Penal Law." Edit. 2. A work, which I am pleaſed to add to the former, as no leſs honourable to humanity, to its author, and the preſent age.

I am

I am perſuaded, to liſten to that *cauſe*) I have not attempted to dilate the ſubject, but have thrown out general hints and obſervations only for future deliberation. And happy ſhall I think my poor and humble endeavours, if they ſhall tend to raiſe a ſingle compaſſionate thought in any ſuperior breaſt, on a ſubject which ſurely well merits the moſt ſerious diſcuſſion.

If amongſt the Romans a *Civick crown* was the reward of him who ſaved the life of a ſingle *citizen*; of what may not *they* be thought worthy, who, by forwarding ſo ſalutary and important a reformation as we have ſuggeſted, ſhall be inſtrumental to ſave from an ignominious death, *numbers* of ſubjects and citizens; hurried into eternity in the very bloom and flower of life; with all their ſins and imperfections on their heads; and cut off at once from all power of reformation, from all poſſibility of making amends to the *ſtate* they have injured, to the *friends* they have diſtreſſed, and the *God* they have daringly offended?

It would ſcarce be credited, if related in diſtant climes, that a *Barbariſm* like this remained in a chriſtian country, celebrated throughout the earth for its juſtice, its humanity, its benevolence! It can ſcarce be doubted, that from ſuch a country a barbariſm like this will ſpeedily be baniſhed; and the leſs doubted, when we reflect,—with triumph reflect, on thoſe great and illuſtrious proofs which have already been given of the high love of juſtice and the generous regard to it, which actuates the ruling powers; Proofs ſufficient to immortalize any reign, and make it dear and venerable to the lateſt poſterity.

poſterity.* May they be truly felt and gratefully acknowledged; and thus become the noble incentives to a perſeverance in actions no leſs honourable to government than beneficial to the people! Incentives, in particular, to add that further proof of an attachment to *Juſtice*, which theſe feeble efforts have attempted to recommend; and which could not fail to ſecure univerſal affection. For, to conclude in the words of the illuſtrious *Italian* before mentioned—" If theſe truths ſhould " haply force their way to the thrones of " princes, Be it known to them, that they come " attended with the ſecret wiſhes of all mankind: " And tell the ſovereign, who deigns them a gra- " cious reception, that *his* fame ſhall out-ſhine the " glory of conquerors; and that equitable poſterity " will exalt *his* peaceful trophies above thoſe of a " *Titus*, an *Antoninus*, or a *Trajan*.

" How happy were mankind, if laws were now " to be firſt formed! now that we ſee on the " thrones of Europe benevolent monarchs, friends " to the virtues of peace, to the arts and ſciences; " fathers of their people! tho' *crowned*, yet *citi-* " *zens!* The increaſe of whoſe authority augments " the happineſs of their ſubjects, by deſtroying " that intermediate deſpotiſm which intercepts " the prayers of the people to the throne! If theſe " humane princes have ſuffered the old laws to " ſubſiſt, it is, doubtleſs, becauſe they are deterred

* The truth of this aſſertion is evident. The facts more eſpecially referred to, are his Majeſty's making the judges independant, and the houſes of parliament limiting their privileges with reſpect to domeſticks, &c.

" by

" by the numberleſs obſtacles which oppoſe the " ſubverſion of *errors* eſtabliſhed by the ſanction " of ages;—and therefore every wiſe citizen will " wiſh for the increaſe of their authority:"

Which God Almighty grant to all ſuch juſt and virtuous princes, for the greater exertion of good; for the increaſe of their people's happineſs; and for the fuller, the univerſal eſtabliſhment of righteouſneſs and equity, of chriſtian truth, benevolence and peace, throughout all the earth, &c! *Amen.*

☞ The Author has here ſubjoined ſome extracts tranſlated from the EMPRESS of RUSSIA's celebrated *Code of Laws*, as it cannot fail to be agreeable to the Reader to know the ſentiments of ſo great and able a Legiſlator on the ſubject of this Diſcourſe: and indeed it is highly pleaſing to obſerve not only the juſtice, but the humanity, which runs through this admirable Code.

Extracts from the Empress of Russia's Code of Laws.

CHAP. VIII. ART. 94.

IT were unjust to inflict the same punishment upon the highway-robber, as upon him who both robs and assassinates. For the publick security, therefore, it is evidently necessary to make some difference in the punishment prescribed for these several crimes.

ART. 95. There is a Country, where thieves do not commit murder: the reason is, because while thieves are there left to hope for transportation to the Colonies, murderers are excluded from that hope.

ART. 96. Good laws adopt the just medium. They do not in all cases impose pecuniary mulcts, nor do they in all cases inflict corporal punishments. All punishments whatever, that mutilate or disfigure the human frame, ought to be abolished.

CHAP. X. QUEST. 5.

How to proportion punishments to the greatness of crimes.

ART. 205. The end proposed in the institution of punishments, cannot be to torment a being whom God has endued with feelings. The object of punishments is to prevent the guilty in future from doing injury to society, and to deter their fellow-

citizens and countrymen from committing the like offences: and ſuch puniſhments, accordingly, ought to be applied, as, being proportioned to the crimes, may make the moſt lively and durable impreſſion upon men's minds, at the ſame time that they are attended with the leaſt appearance of cruelty to the body of the criminal.

ART. 206. Who does not tremble with horror at ſeeing in hiſtory ſo many barbarous and uſeleſs tortures, invented and employed in cool blood, by men who call themſelves Sages? Who does not feel his inmoſt ſoul agonized at the ſight of thoſe thouſands of unfortunate wretches who have ſuffered, and are daily ſuffering them; accuſed of crimes often improbable (not to ſay impoſſible); often merely ſuggeſted by ignorance, and ſometimes by ſuperſtition? Who is there, I ſay, that can ſteadfaſtly and unpitying, behold men, racked and torn to pieces by men, their brethren, and that too with horrid pomp and parade? Thoſe countries, and thoſe times in which the moſt cruel puniſhments were inflicted, are thoſe in which we have ſeen the moſt atrocious enormities perpetrated in the moſt daring manner.

ART. 207. For a puniſhment to produce the deſired effect, it is enough that the evil which it occaſions exceed the fancied advantage reſulting from the crime; at the ſame time taking into the account of ſuch evil, preponderating the good, the Certainty of the puniſhment, and the loſs of thoſe advantages which the crime might be ſuppoſed to produce. All ſuch ſeverity as exceeds theſe limits, is uſeleſs, and conſequently tyrannical.

ART.

QUEST. 6. ART. 209. Whether punishment by Death is of utility, and necessary for the security and good order of a state?

ART. 210. Experience demonstrates, that the frequent repetition of capital punishments hath never yet made men better. If therefore I can shew that *in the ordinary state of Society*, the death of a citizen is neither useful nor necessary, I shall have pleaded the cause of humanity with success. I said, "in the *ordinary State*;" for the death of a citizen may be necessary, in one particular case; I mean when, though deprived of Liberty, he hath still means and power left to disturb the national repose; a case which can never happen, except when a people loses or recovers it's liberty, or in times of Anarchy, when disorder and confusion usurp the place of laws. But while those laws bear quiet and peaceful sway, and under a form of government approved by the united voice of the nation; in a State defended against enemies from without, sustained by the firm basis of power and general sanction from within, and where authority is lodged in the hands of the Sovereign: In such a state there can be no necessity for taking away the life of a citizen. The twenty years reign of the Empress ELIZABETH gave the fathers of the people a more excellent pattern, than that of all the pomps of war, victory, and devastation, held forth by the most glorious conquerors.

ART. 226. If two crimes, unequally hurtful to Society, receive an equal punishment, this unequal distribution of penalty will produce that strange contradiction, little attended to, though very frequently

quently obvious ; " That the laws will have occaſion to puniſh crimes, which they themſelves have countenanced."

ART. 227. If the ſame puniſhment be aſſigned for him who kills a brute animal, as for him who kills a man, or forges a writing of great importance, there will ſoon be no difference or diſtinction made between theſe crimes, by careleſs and profligate men.

Mrs Kippen

from James Mudock

Port Bannatyne

4 September 1822